

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 1:23-cv-00853-DAE

GREG ABBOTT, in his capacity as
GOVERNOR OF THE STATE OF TEXAS,
and THE STATE OF TEXAS,

Defendants.

**DECLARATION OF MARGARET GAFFNEY-SMITH IN SUPPORT OF THE UNITED
STATES' MOTION FOR PROTECTIVE ORDER**

I, Margaret Gaffney-Smith, based on my personal knowledge, do declare as follows:

1. I am the Deputy Chief of Operations and Regulatory Division, Headquarters, United States Army Corps of Engineers (USACE). My responsibilities include national oversight of the development, resourcing, and delivery of the Operations and Maintenance programs for the USACE Civil Works Program, including water resource management infrastructure for purposes such as navigation, hydroelectric power, public recreation and environmental stewardship on USACE-managed lands and waters, and regulation of navigable waters of the United States.

USACE

2. USACE is a direct reporting unit to the Department of Army, a component within the Department of Defense. USACE has military and civilian responsibilities. Among its civilian responsibilities, USACE has a Regulatory Program and an Operations and Maintenance

Program. As Deputy Chief of Operations and Regulatory Division, I oversee both the Regulatory and Operations and Maintenance programs for the USACE Civil Works Program.

3. The USACE, through its Regulatory Program, administers and enforces Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) in accordance with its implementing regulations. 33 C.F.R. Part 320, et seq.

4. The USACE, through its Civil Works Operations and Maintenance Program, plans, constructs, operates, and maintains a range of Congressionally-authorized water resources projects, including navigation channels, providing benefits for multiple purposes including navigation, flood risk management, hydroelectric power generation, water supply, recreation, fish and wildlife conservation, and ecosystem restoration.

Amended 30(b)(6) Deposition Notice to USACE

5. I am aware that Texas served upon counsel for the United States an amended notice of 30(b)(6) depositions on June 20, 2024 for USACE (“USACE Amended Notice”).

6. I have reviewed the USACE Amended Notice topics.

7. It would be impossible for USACE to prepare a witness to testify on several of the topics—USACE Amended Notice ¶¶ 27, 28, 29, 30, 40—because those topics would require information and data that USACE does not possess and that is not known to USACE.

8. Similarly, it would be impossible for USACE to prepare a witness to testify on other topics—USACE Amended Notice ¶¶ 31, 55—because the topics would require testimony on information that USACE does not know or have and that is not compiled, monitored, or tracked in the usual course of USACE Regulatory or Civil Works operations.

9. And certain other of the topics—USACE Amended Notice ¶¶ 33, 35, 45—seek information that is not known or reasonably available to USACE because the information is not within USACE’s Congressional mandate, its mission, operations, or purview.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 1, 2024

Margaret Gaffney-Smith
Deputy Chief
Operations and Regulatory Division
Headquarters, USACE
Washington, D.C.